

## **REMARKS**

Claim 9 has been amended to correct an obvious typographical error.

Claims 1-2, 4, 6, and 8 were rejected under 35 USC § 102(e) as being anticipated by Ferguson (US 6,615,648). Claims 3, 5, 7, and 9-10 were rejected under 35 USC § 103(a) as being unpatentable over Ferguson (6,615,648).

Applicants note that the Examiner has made this Office Action final. However, a review of our records indicate that Ferguson was never cited prior to this rejection. The Examiner is asked to reconsider his holding that this Office Action is final.

The present invention will be briefly reviewed with respect to claim 1. Claim 1 provides a method for detecting the presence of failure(s) in existing man-made structures. As set forth in element (a) of claim 1, a detectable material is provided on a surface of the existing man-made structure so that portions of the detectable material will be present in the failures of the existing man-made structure that accentuates the failure. This material is clearly added to aid in the detection process, and is not part of the original man-made structure. As set forth in element (b), an image sensor captures at least one image of the existing man-made structure and identifies failure(s) due to the existence of the detectable material present in the failure(s) to provide at least one digital image. Thereafter, as required by element (c), the captured digital image(s) provide a visual image of the existing man-made structure to determine the presence of failure(s) in the existing man-made structure.


At the outset, it should be noted that Ferguson does not add any materials to an existing structure. What Ferguson does, as set forth in column 6, is to set the exposure control based on the reflectivity of the binder materials in aggregate and road surfaces. The exposure is then adjusted. Nowhere is there any suggestion or motivation of providing a detectable material on a surface of a preexisting structure and ensuring that portion of the detectable material will be present in a failure. Ferguson includes a digital camera mounted on a vehicle that is positioned relative to a pavement surface and captures images as the vehicle moves along the surface. There is no disclosure or suggestion of the addition of a material to a preexisting structure that will aid in the detection process. The present invention provides a more effective way of determining failures in

existing man-made structures by applying a detection chemical or agent to the surface, the failure detection process can be significantly improved.

The remaining claims all depend upon claim 1 and should be allowed along with it. Claim 5 sets forth that the image processing includes storing in memory a representation of different failures to be detected and comparing the captured digital image with the failures to determine the presence of a failure, and location of such failure. Applicants have reviewed the processing software discussed in column 11, line 21 to column 12, lines 1-10 and can find nothing in the Ferguson arrangement which compares captures digital images with previously stored representations of different failures. Clearly, the Ferguson detectable material is not separately provided on a preexisting structure, but Ferguson is trying to improve the capture of his image sensor by adjusting for the reflectivity of binder materials. Accordingly, this claim, in combination with the features of claim 1, is believed to define unobvious subject matter.

In view of the foregoing, it is believed that neither Ferguson or any of the other cited references provide any motivation or suggestion for the subject matter of independent claim 1. Claim 1 is believed to define unobvious subject matter. Accordingly, this application is believed to be in condition for allowance, the notice of which is respectfully requested.

Respectfully submitted,



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Enclosure